



**VIA CERTIFIED MAIL & ELECTRONIC MAIL**

December 21, 2018

**TO:**

U.S. Citizenship and Immigration Services  
National Records Center, FOIA/PA Office  
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Lee's Summit, MO 64064-2139

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U.S. Immigration and Customs  
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Freedom of Information Act Office  
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**FROM:**

Asian Americans Advancing Justice – Los  
Angeles  
c/o Laboni Hoq  
1145 Wilshire Blvd.  
Los Angeles, CA 90017

**Re: Request Under Freedom of Information Act**

To Whom It May Concern:

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, Asian Americans Advancing Justice – Los Angeles (“the Requester”) hereby requests from the United States Citizenship and Immigration Services (“USCIS”) and all its subordinate offices, the Department of Homeland Security (“DHS”), Immigration and Customs Enforcement (“ICE”), the Office of the Attorney General (“OAG”), and the United States Department of Justice (“DOJ”) records related to PM-602-0050.1, Updated Guidance for the Referral of Cases and Issuance of Notices to Appear NTAs in Cases Involving Inadmissible and Deportable Aliens (herein “the New NTA Policy”).

**I. BACKGROUND**

On June 28, 2018, U.S. Citizenship and Immigration Services issued a policy memorandum titled “Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens” (PM-602-0050.1). The New NTA Policy purports to supersede a 2011 policy memorandum (“2011 NTA Guidance”) and expands the circumstances under which USCIS should issue an NTA or refer a case to Immigration and Customs Enforcement for initiation of removal proceedings against a noncitizen who applies for an immigration benefit.

The stated purpose of the New NTA Policy is to “outline how USCIS’ NTA and referral policies serve to implement the Department of Homeland Security’s new removal priorities,” which were identified shortly after the inauguration of President Donald Trump in his January 25, 2017 “Executive Order: Enhancing Public Safety in the Interior of the United States,”<sup>1</sup> (“EO 13768”) and in then-Secretary of the Department of Homeland Security John Kelly’s February 20, 2017 implementing memorandum, “Enforcement of the Immigration Laws to Serve the National Interest”<sup>2</sup> (the “DHS Memorandum”). EO 13768 and the DHS Memorandum reflect President Trump’s desire to abandon the prior administration’s targeted enforcement priorities focusing on individuals with criminal records and, instead, expands enforcement priorities to include virtually “*all removable aliens*.”

After issuing the New NTA Policy on June 28, 2018, on July 30, 2018, USCIS announced that it would postpone implementation of the new changes until operational guidance was issued.<sup>3</sup> On September 26, 2018, USCIS announced that it would officially begin

<sup>1</sup> President Donald Trump, Executive Order 13768: Enhancing Public Safety in the Interior of the United States (Jan. 25, 2017).

<sup>2</sup> Department of Homeland Security, “Enforcement of the Immigration Laws to Serve the National Interest,” (February 20, 2017).

<sup>3</sup> See “Notice to Appear Policy Memorandum,” at <https://www.uscis.gov/legal-resources/notice-appear-policy-memorandum>

implementing the New NTA Policy on October 1, 2018.<sup>4</sup> This announcement stated, however, that the New NTA Policy “will not be implemented with respect to employment-based petitions and humanitarian applications and petitions at this time. Existing guidance for these case types will remain in effect.” At that time, USCIS did not advise when the new policy would be implemented with respect to employment-based petitions and humanitarian applications and petitions, nor did USCIS commit to providing notice on when the new policy would be so implemented.

On November 8, 2018, USCIS issued a notice stating that beginning on November 19, 2018 USCIS “may also issue NTAs” for denials involving certain humanitarian based visa petitions including for U (victims of serious crimes), T (human trafficking), VAWA (for victims of domestic violence), etc.<sup>5</sup> USCIS also clarified that they do not plan to implement any NTA for employment-based applications at this time.

## II. REQUEST FOR EXPEDITED PROCESSING

The Requester requests expedited processing, pursuant to 5 U.S.C. § 552(a)(6)(I). Because of the severity of the issue of deportation or removal and because of the size of the impacted populations, which likely exceeds tens of thousands of legal permanent residents, temporary nonimmigrants, and unauthorized persons, the public has a right to know this information on an expedited basis. Specifically, the requested records seek to inform the public about federal agency activities concerning the New NTA Policy, and in particular the changes to the criteria for issuing Notices to Appear. Because the information requested is “urgently” needed by an organization primarily engaged in disseminating information “to inform the public concerning actual or alleged Federal Government activity,” there is a “compelling need” for these records, as defined in the statute. 5 U.S.C. § 552(a)(6)(E)(v)(II). These changes have recently gone into effect with little information from relevant federal agencies, resulting in the need to immediately access the requested information in order to understand and educate the public about the impact of such changes.

## III. REQUESTED RECORDS

For the purposes of this request, “Record” should be given the broadest possible meaning under 5 U.S.C. § 552(f)(2), which defines a Record as “(a) **any information** that would be an agency record subject to the requirements of this section when maintained by an agency **in any format**, including an electronic format; and (B) any information described under subparagraph (A) that is maintained for an agency by an entity under Government contract, for the purposes of records management” (emphasis added).

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<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

#### **IV. SPECIFIC REQUESTS**

We request the release of the following:

(a) Records Related to the Implementation of the New NTA Policy, PM-602-0050.1

- (1) All Policy Memoranda and Guidance relating to USCIS's policies and practices for referring cases and issuing NTAs in cases involving inadmissible and deportable aliens from 2000 to the present.
- (2) All Records related to what criteria USCIS will apply in deciding whether to issue NTAs to individuals whose applications for humanitarian-based visas have been denied, including for U (victims of serious crimes), T (human trafficking), VAWA (for victims of domestic violence), and Special Immigrant Juvenile Status applicants.
- (3) All Records related to what criteria USCIS will apply in deciding whether to issue NTAs to individuals whose applications for family-based visas have been denied, including I-485 applicants.
- (4) All Records related to the implementation of any NTA Policy Memoranda or Guidance, including without limitation, documents concerning or reflecting communications regarding the New NTA Policy.
- (5) All Records distributed to the USCIS Field Offices and Processing Centers to train immigration officers and applicant adjudicators regarding the New NTA Policy.
- (6) All Records discussing and relied upon by USCIS for the justification of the New NTA Policy, including how it will enhance public safety, national security and integrity of the immigration system.
- (7) All Records discussing or relied upon in assessing whether or not the New NTA Policy would create a deterrent effect or "chilling effect" on individuals seeking immigration benefits.
- (8) All Records relating to how USCIS and/or ICE officers will apply prosecutorial discretion to individuals subject to the New NTA Policy, including training materials for immigration officers, or any other personnel tasked with adjudicating USCIS applications.
- (9) All Records reflecting any changes or updates made to any agency manual or administrative guidance after the issuance of the New NTA Policy, including but not limited to the USCIS Policy Manual.

- (10) All Records, including internal and external memoranda that discuss the Congressional intent underlying VAWA, U and T visas, and the legality of applying the new NTA policy to VAWA, U and T visas.
- (11) All Records, including memoranda or other writing, discussing the decision to not apply the new NTA policy to certain categories of non-citizens, e.g., Temporary Protected Status, Deferred Action for Childhood Arrivals (DACA) recipients, employment-based petitions, etc.
- (12) All Records, including memoranda or other writing, regarding the application or decision to not apply the New NTA Policy to applications for employment-based application.
- (13) All Records, including memoranda or other writing created by USCIS, discussing the October 1, 2018 implementation date of the New NTA Policy for I-485 and I-539 applications.
- (14) All Records, including memoranda or other writing created by USCIS, discussing the November 17, 2018 implementation date of the New NTA Policy based on denials of Forms I-914/I-914A, Applications for T Nonimmigrant Status; I-918/I-918 Petitions for U Nonimmigrant Status; I-360 Petition for Amerasian, Widow(er), or Special Immigrant (Violence Against Women Act self-petitions and Special Immigrant Juvenile petitions); Form I-929, Petition for Qualifying Family Member of a U-1 Nonimmigrant; I-730 Refugee/Asylee Relative Petitions; and I-485 Applications to Register Permanent Residence or Adjustment of Status with these underlying form types.
- (15) All Records, including memoranda or other writing created by USCIS, discussing the legality of the New NTA Policy.
- (16) All Records, including any memoranda or other writing created by USCIS, discussing any cost and benefit analysis or feasibility study of the impact of the New NTA Policy, including the impact it would have on adjudication times of all outstanding applications.
- (17) All Records and communications between and among USCIS, the DOJ, ICE, the Office of the Attorney General, DHS, and any other government agency regarding the implementation of the New NTA Policy.
- (18) All Records indicating the effect that the new NTA policy would have on survivors of domestic and sexual violence (VAWA self-petitioners), human trafficking (T Visa) and crime victims (U Visa applicants).

(b) Data and Statistics Related to the Issuance of NTAs, RTIs, RFEs, and NOIDs from 2000 to the Present

- (1) The Number of NTAs in total issued by USCIS by year for the years 2017 to the Present.
- (2) The Number of NTAs in total issued by USCIS for each year from 2000 to the present, broken out by the grounds for issuing the NTA, including, but not limited to, the number of NTA's issued between 2000 and the Present issued on the basis that:
  - (a) There was fraud or misrepresentation in the application;
  - (b) The applicant had abused public benefits;
  - (c) The applicant represented a threat to National Security;
  - (d) The applicant was convicted of or accused of an Egregious Public Safety (EPS) crime or violation;
  - (e) The applicant was convicted of a Non-Egregious Public Safety crime;
  - (f) The applicant was not lawfully present; or
  - (g) any other reason offered by USCIS for issuing the NTA.
- (3) The Number of applications submitted, granted, denied, and NTAs issued (and the basis of the NTA, e.g. fraud, national security, public safety, etc.) by USCIS for all years from 2000 to the present, broken down by the type of benefit that the applicant applied for, including, but not limited to:
  - (a) I-485 applications, Adjustment of Status, in general;
  - (b) I-485 applications, where the Adjustment of Status is based on a qualifying family relationship, including, but not limited to, immediate relatives of US Citizens, Other Relatives of a US System or lawful permanent resident, K Visa applicants, Widow or Widowers of a US citizen, and VAWA self-petitioners;
  - (c) I-485 applications, where the Adjustment of Status is based on qualifying employment;
  - (d) I-485 applications, where the Adjustment of Status is based on a humanitarian reason, including, but not limited to, a previously approved T visa applicants, U Visa applicants, Special Immigrant Juvenile Status applicants, Asylum & Refugee Status (Form I-589 or I-730) applicants;

- (e) I-867 or I-889 applications, based on a positive credible fear finding;
  - (f) N-400 Naturalization applications;
  - (g) I-589, applications for asylum;
  - (h) I-730 Refugee/Asylee Relative Petitions applications;
  - (i) I-360, applications for Amerasian, Widow(er), or Special Immigrant in general;
  - (j) I-360, applications for Special Immigrant Juvenile Status (SIJS);
  - (k) I-360, applications for Violence against Women Act (VAWA) status;
  - (l) I-918/I-918A, applications for U Nonimmigrant Status;
  - (m) I-914/I-914A, applications for T Nonimmigrant Status;
  - (n) I-131 applications;
  - (o) NACARA 203 Applications;
  - (p) I-601a applications for Waiver of Inadmissibility;
  - (q) I-730 applications, Refugee/Asylee Relative Petition;
  - (r) I-821, Application for Temporary Protected Status;
  - (s) I-821D, Application for Deferred Action on Childhood Arrivals;
  - (t) I-765, Application for Employment Authorization;
  - (u) I-751, Petition to Remove Conditions on Residence;
  - (v) I-817, Application for Family Unity Benefits; or
  - (w) any other application adjudicated by USCIS;
- (4) The number of cases that a USCIS officer referred a N-400 application to the NTA Review Panel from 2000 to the present, and the number of cases in which the NTA Review Panel decided to issue an NTA, declined to issue an NTA, referred the case to ICE, or took other action.
- (5) The Number of RFEs and NOIDs issued by USCIS for each year from 2000 to the present, including as broken out by the grounds for issuance of the RFE or NOID.



- (6) The Number of cases denied subsequent to the issuance of an RFEs and/or a NOID issued by USCIS for each year from 2000 to the present, broken down by the different grounds for issuance of the RFE or NOID
- (7) The Number of Referrals to ICE (“RTIs”) made by USCIS made between 2000 to the Present, broken down by the different grounds that the RTI was issued.

## **V. LOCATION OF RECORDS**

In processing the request, the Requester asks that, at a minimum, responsive Records be retrieved from each and all of the following locations:

- (1) The Offices of the Director of USCIS;
- (2) The Office of Chief Counsel of USCIS;
- (3) The Office of the Chief of Staff of USCIS;
- (4) The Office of Policy and Strategy of USCIS;
- (5) The Office of the Deputy Director of USCIS and all subordinate branches;
- (6) The Potomac, Nebraska, Vermont, California, and Texas Service Centers;
- (7) The Office of the Associate Director of the Service Center Operations Directorate (SCOPS);
- (8) The Office of the Attorney General of the Department of Justice and all subordinate offices;
- (9) The Office of the Secretary of the Department of Homeland Security and all subordinate offices; or
- (10) Any other government agency or office that was involved in the implementation of the New NTA Policy.

## **VI. REQUEST FOR WAIVER OF ALL FEES**

Because disclosure is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester,” the Requester requests a waiver of document search, review, and duplication fees 5 U.S.C. § 552(a)(4)(A)(iii). The Requester is a nonprofit, public interest, legal aid organization who serve clients impacted by the New NTA Policy, and whose primary interest is to obtain information to further the public’s understanding of the New NTA Policy. The Requester is not filing this Request to further their commercial interests. Any information disclosed as a result of





this Request will be made available to the public at no cost. Thus, a fee waiver would fulfill Congress's legislative intent in amending the FOIA.

## V. CONCLUSION

We appreciate your attention to this matter, and we look forward to receiving your determination regarding our request for expedited processing within ten (10) calendar days. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 6 C.F.R. § 5.5(d)(4).

If this Request is denied in whole or in part, the Requesters ask the Agencies to justify all withholdings or deletions by reference to specific FOIA exemptions. The Requesters expect the Agencies to release all segregable portions of otherwise exempt material and reserves the right to appeal a decision to withhold any records or portions of records or to deny the requests for a fee waiver and expedited processing.

Please furnish all applicable records to:

David S. Cohen  
Partner  
Milbank, Tweed, Hadley & McCloy LLP  
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Washington, D.C. 20006  
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Thank you for your prompt attention to this matter. I affirm that the information provided supporting the request for expedited processing is true and correct to the best of my knowledge and belief. *See* 5 U.S.C. § 552(a)(6)(E)(vi).

Sincerely,

Laboni Hoq  
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Cc:

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